

technically feasible.””” The Commission also requires LECs to gradually replace interim number portability with permanent number portability.”” The Commission has established guidelines for states to follow in mandating a competitively neutral cost-recovery mechanism for interim number portability,”” and created a competitively neutral cost-recovery mechanism for long-term number portability.<sup>218</sup>

## L. Checklist Item 12 – Local Dialing Parity

**64.** Section 271(c)(2)(B)(xii) requires a BOC to provide “[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of section 251(b)(3).”<sup>219</sup> Section 251(b)(3) imposes upon all LECs “[t]he duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with no unreasonable dialing delays.”<sup>220</sup> Section 153(15) of the Act defines “dialing parity” as follows:

[A] person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer’s designation.””

<sup>215</sup> *Fourth Number Portability Order*, 15 FCC Rcd at 16465, para. 10; *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8409-12, paras. 110-16 (1996) (*First Number Portability Order*); see also 47 U.S.C. § 251(b)(2).

<sup>216</sup> See 47 C.F.R. §§ 52.3(b)-(f); *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8355, 8399-8404, paras. 3, 91; *Third Number Portability Order*, 13 FCC Rcd at 11708-12, paras. 12-16.

<sup>217</sup> See 47 C.F.R. § 52.29; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *First Number Portability Order*, 11 FCC Rcd at 8417-24, paras. 127-40.

<sup>218</sup> See 47 C.F.R. §§ 52.32, 52.33; *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20758, para. 275; *Third Number Portability Order*, 13 FCC Rcd at 11706-07, para. 8; *Fourth Number Portability Order* at 16464-65, para. 9.

<sup>219</sup> Based on the Commission’s view that section 251(b)(3) does not limit the duty to provide dialing parity to any particular form of dialing parity (*i.e.*, international, interstate, intrastate, or local), the Commission adopted rules in August 1996 to implement broad guidelines and minimum nationwide standards for dialing parity. *Local Competition Second Report and Order*, 11 FCC Rcd at 19407; *Inrerconnecrion Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, CC Docket No. 95-185, Further Order On Reconsideration, FCC 99-170 (rel. July 19, 1999).

<sup>220</sup> 47 U.S.C. § 251(b)(3)

<sup>221</sup> *Id.* § 153(15).

65. The rules implementing section 251(b)(3) provide that customers of competing carriers must be able to dial the same number of digits the BOC's customers dial to complete a local telephone call.” Moreover, customers of competing carriers must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.”

#### M. Checklist Item 13 – Reciprocal Compensation

66. Section 271(c)(2)(B)(xiii) of the Act requires that a BOC enter into “[r]eciprocal compensation arrangements in accordance with the requirements of section 252(d)(2).”<sup>224</sup> In turn, pursuant to section 252(d)(2)(A), “a state commission shall not consider the terms and conditions for reciprocal compensation to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.”<sup>225</sup>

#### N. Checklist Item 14 – Resale

67. Section 271(c)(2)(B)(xiv) of the Act requires a BOC to make “telecommunications services . . . available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).”<sup>226</sup> Section 251(c)(4)(A) requires incumbent LECs “to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.”” Section 252(d)(3) requires state commissions to “determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any marketing, billing, collection, and other costs that will be avoided by the local exchange carrier.”<sup>228</sup> Section 251(c)(4)(B) prohibits “unreasonable or discriminatory conditions or limitations” on service resold under section 251(c)(4)(A).<sup>229</sup> Consequently, the Commission concluded in the *Local Competition First Report and Order* that resale restrictions are presumed

<sup>222</sup> 47 C.F.R. §§ 51.205, 51.207

<sup>223</sup> See 47 C.F.R. § 51.207 (requiring same number of digits to be dialed); *Local Competition Second Report and Order*, 11 FCC Rcd at 19400, 19403.

<sup>224</sup> 47 U.S.C. § 271(c)(2)(B)(xiii)

<sup>225</sup> *Id.* § 252(d)(2)(A)

<sup>226</sup> *Id.* § 271(c)(2)(B)(xiv).

<sup>227</sup> *Id.* § 251(c)(4)(A).

<sup>228</sup> *Id.* § 252(d)(3).

<sup>229</sup> *Id.* § 251(c)(4)(B).

to be unreasonable unless the LEC proves to the state commission that the restriction is reasonable and nondiscriminatory.” If an incumbent LEC makes a service available only to a specific category of retail subscribers, however, a state commission may prohibit a carrier that obtains the service pursuant to section 251(c)(4)(A) from offering the service to a different category of subscribers.” If a state creates such a limitation, it must do so consistent with requirements established by the Federal Communications Commission.<sup>232</sup> In accordance with sections 271(c)(2)(B)(ii) and 271(c)(2)(B)(xiv), a BOC must also demonstrate that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services.<sup>233</sup> The obligations of section 251(c)(4) apply to the retail telecommunications services offered by a BOC’s advanced services affiliate.<sup>234</sup>

## V. COMPLIANCE WITH SEPARATE AFFILIATE REQUIREMENTS – SECTION 272

**68.** Section 271(d)(3)(B) requires that the Commission shall not approve a BOC’s application to provide interLATA services unless the BOC demonstrates that the “requested authorization will be carried out in accordance with the requirements of section 272.”<sup>235</sup> The Commission set standards for compliance with section 272 in the *Accounting Safeguards Order* and the *Non-Accounting Safeguards Order*.” Together, these safeguards discourage and

<sup>230</sup> *Local Competition First Report and Order*, 11 FCC Rcd at 15966, para. 939; 47 C.F.R. § 51.613(b). The Eighth Circuit acknowledged the Commission’s authority to promulgate such rules, and specifically upheld the sections of the Commission’s rules concerning resale of promotions and discounts in *Iowa Utilities Board, Iowa Utils. Bd. v. FCC*, 120 F.3d at 818-19, *aff’d in part and remanded on other grounds*, *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999). See also 47 C.F.R. §§ 51.613-51.617.

<sup>231</sup> 47 U.S.C. § 251(c)(4)(B).

<sup>232</sup> *Id.*

<sup>233</sup> See, e.g., *Bell Atlantic New York Order*, 15 FCC Rcd at 4046-48, paras. 178-81 (Bell Atlantic provides nondiscriminatory access to its OSS ordering functions for resale services and therefore provides efficient competitors a meaningful opportunity to compete).

<sup>234</sup> See *Verizon Connecticut Order*, 16 FCC Rcd 14147, 14160-63, paras. 27-33 (2001); *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

<sup>235</sup> 47 U.S.C. § 271(d)(3)(B)

<sup>236</sup> See *Implementation of the Accounting Safeguards Under the Telecommunications Act of 1996*, CC Docket No. 96-150, Report and Order, 11 FCC Rcd 17539 (1996) (*Accounting Safeguards Order*), Second Order On Reconsideration, FCC 00-9 (rel. Jan. 18, 2000); *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905 (1996) (*Non-Accounting Safeguards Order*), petition for review pending sub nom. *SBC Communications v. FCC*, No. 97-1118 (filed D.C. Cir. Mar. 6, 1997) (held in abeyance May 7, 1997), First Order on Reconsideration, 12 FCC Rcd 2297 (1997) (*First Order on Reconsideration*), Second Order on Reconsideration, 12 FCC Rcd 8653 (1997) (*Second Order on Reconsideration*), *aff’d sub nom. Bell Atlantic Telephone Companies v. FCC*, 131 F.3d 1044 (D.C. Cir. 1997), Third Order on Reconsideration, FCC 99-242 (rel. Oct. 4, 1999) (*Third Order on Reconsideration*).

facilitate the detection of improper cost allocation and cross-subsidization between the BOC and its section 272 affiliate.<sup>237</sup> In addition, these safeguards ensure that BOCs do not discriminate in favor of their section 272 affiliates.”

69. As the Commission stated in the *Ameritech Michigan Order*, compliance with section 272 is “of crucial importance” because the structural, transactional, and nondiscrimination safeguards of section 272 seek to ensure that BOCs compete on a level playing field.” The Commission’s findings regarding section 272 compliance constitute independent grounds for denying an application.” Past and present behavior of the BOC applicant provides “the best indicator of whether [the applicant] will carry out the requested authorization in compliance with section 272.”<sup>241</sup>

## VI. COMPLIANCE WITH THE PUBLIC INTEREST – SECTION 271(D)(3)(C)

70. In addition to determining whether a BOC satisfies the competitive checklist and will comply with section 272, Congress directed the Commission to assess whether the requested authorization would be consistent with the public interest, convenience, and necessity.<sup>242</sup> Compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. This approach reflects the Commission’s many years of experience with the consumer benefits that flow from competition in telecommunications markets.

71. Nonetheless, the public interest analysis is an independent element of the statutory checklist and, under normal canons of statutory construction, requires an independent determination.” Thus, the Commission views the public interest requirement as an opportunity to review the circumstances presented by the application to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the

<sup>237</sup> *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914; *Accounting Safeguards Order*, 11 FCC Rcd at 17550; *Ameritech Michigan Order*, 12 FCC Rcd at 20725.

<sup>238</sup> *Non-Accounting Safeguards Order*, 11 FCC Rcd at 21914, paras. 15-16; *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346.

<sup>239</sup> *Ameritech Michigan Order*, 12 FCC Rcd at 20725, para. 346; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

<sup>240</sup> *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20785-86, para. 322; *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

<sup>241</sup> *Bell Atlantic New York Order*, 15 FCC Rcd at 4153, para. 402.

<sup>242</sup> 47 U.S.C. § 271(d)(3)(C)

<sup>243</sup> In addition, Congress specifically rejected an amendment that would have stipulated that full implementation of the checklist necessarily satisfies the public interest criterion. See *Ameritech Michigan Order*, 12 FCC Rcd at 20747 at para. 360-66; see also 141 Cong. Rec. S7971, S8043 (June 8, 1995).

competitive checklist, and that entry will therefore serve the public interest **as** Congress expected. Among other things, the Commission may review the local and long distance **markets** to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of the application at issue.<sup>244</sup> Another factor that could be relevant to the analysis is whether the Commission has sufficient assurance that markets will remain open after grant of the application. While no one factor is dispositive in this analysis, the overriding goal is to ensure that nothing undermines the conclusion, based on the Commission's analysis of checklist compliance, that markets are open to competition.

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<sup>244</sup> See *Second BellSouth Louisiana Order*, 13 FCC Rcd at 20805-06, para. 360 (the public interest analysis *may* include consideration of “whether **approval . . . will** foster competition in all relevant telecommunications markets”).

**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS,  
APPROVING IN PART. CONCURRING IN PART**

*Re: Application by Verizon Virginia, Inc., Verizon Long Distance Virginia, Inc., Verizon Enterprise Solutions Virginia Inc., Verizon Global Networks, Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region InterLATA Services in Virginia*

I commend Verizon for the steps it has taken to open its local markets to competition in my home state of Virginia. My neighbors will now have the opportunity to benefit from the expanded competition envisioned by Congress in the Telecommunications Act of 1996.

I concur in part rather than approve this decision for the same reasons laid out in my statement in the recent *New Hampshire/Delaware 271 Order*. As in that order, the majority concludes that the statute permits Bell companies in all instances to demonstrate compliance with the checklist by aggregating the rates for non-loop elements. I disagree with the majority's analysis. I believe the better reading of the statute is that the rate for each network element must comport with Congress' pricing directive. We are faced with an analogous situation in Virginia. In addition, in this instance, although not a basis for our decision, I note that Verizon will true up the switching rates in Virginia to the date it filed its application once this agency issues its arbitration decision on the pricing issues. To be effective, however, we must complete that arbitration as expeditiously as possible.

Finally, I would reemphasize the need to institute better follow-up on what happens in a state following a successful application. Verizon was the first Bell company to receive long-distance authorization almost three years ago. Yet even today, our data on whether competition is taking hold is sketchy and non-integrated. In the next few months, we will be evaluating a number of applications and completing decisions on network elements and on whether to allow the sunset of the separate affiliate requirements for Verizon. These data are important for judging the 271 process and evaluating the options in these other proceedings. In addition, we have a statutory duty to ensure that carriers continue to comply with their obligations after the grant of a 271 application. It is only with good data and continued vigilance that we can ensure that consumers reap the benefits of competition.

**SEPARATE STATEMENT OF  
COMMISSIONER KEVIN J. MARTIN,  
APPROVING IN PART AND CONCURRING IN PART**

*Re: Application by Verizon Virginia Inc., Verizon Long Distance Virginia Inc., Virginia Enterprise Solutions Virginia Inc., Verizon Global Networks Inc., and Verizon Select Services of Virginia Inc., for Authorization to Provide In-Region, InterLATA Services in Virginia (WC Docker No. 02-214)*

Today we grant Verizon authority to provide in-region, interLATA service originating in the State of Virginia. I support this Order and commend the Virginia State Corporation Commission for their hard work.

Nevertheless, I concur in this Order because of concerns with two issues: (i) the statutory analysis on the standard for reviewing the pricing of individual unbundled network elements (“UNEs”) in Section 271 applications and (ii) the application of our complete-as-filed requirement.

In today’s action, the Commission finds that the statute does not require it to evaluate individually the checklist compliance of UNE TELRIC rates on an element-by-element basis. The Commission concludes that because the statute uses the plural term “elements,” it has the discretion to ignore subsequent reference to prices for a particular “element” in the singular. As I have stated in the past, I disagree.’

Bell operating companies seeking to enter the long distance market must meet the requirements of the fourteen point checklist contained in section 271 of the Act.’ The 271 process requires that the Commission ensure that the applicants comply with all of these checklist requirements. One of the items on the checklist requires that the Commission: (i) verify that the Bell operating company provides nondiscriminatory access to network elements; and (ii) ensure that rates are

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<sup>1</sup> See Statement of Commissioner Kevin J. Martin, *Application by Verizon New England Inc., Verizon Delaware Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions), Verizon Global Networks, Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in New Hampshire and Delaware (WC Docker No. 02-157)*, October 3, 2002 (*Approving in Part and Concurring in Part*).

<sup>2</sup> See 47 U.S.C. 271

just and reasonable based on the cost of providing “the network element,” in accordance with section 251(c)(3) of the Act.<sup>4</sup>

The pricing standard for network elements analyzed during the 271 checklist review process resides in Section 252. Under this section, states must set unbundled network element rates that are just and reasonable and “based on the cost of providing the network element.”<sup>5</sup> The clearest reading of this section would seem to require that the Commission ensure that the rates charged for any particular element ~~is~~ based on that element’s cost. Previously, the Commission has determined that this requirement is satisfied by compliance with TELRIC principles for pricing. Thus the most straightforward reading of our statutory obligation is to make sure that the price of every element—and particularly the price of any element that someone specifically alleges is not based on cost—is actually based on cost.

In defense of its statutory interpretation, the Commission argues that because the general statutory provisions refer to the term network elements in the plural, the Commission is not required “to perform a separate evaluation of the rate for each network element in isolation.”<sup>6</sup>

Typical statutory construction requires specific directions in a statute take precedent over any general admonitions. Contrary to such accepted principles of statutory construction, the order suggests that general language referring to the network elements (in the plural form) in sections 252 and 271 trumps the language addressing the specific pricing standard in section 252 that requires a determination on the cost of providing the network element. In my view, such an interpretation runs contrary to those principles.

The decision attempts to find additional support for its statutory interpretation by noting that the only party that raised this legal issue on the record also takes the position that some degree of aggregation is appropriate in conducting a benchmark analysis. First, I am not sure that an outside party’s inconsistency could absolve the Commission of its obligation under the Act--in this case-- to evaluate individually the checklist compliance of UNE TELRIC rates on an element-by-element basis.’

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<sup>3</sup> See 47 U.S.C. 271(c)(2)(B)(ii) and 47 U.S.C. 252(d)(1).

<sup>4</sup> See 47 U.S.C. 251(c)(3). Requires that incumbent local exchange carriers provide “...nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory..”

<sup>5</sup> Section 252(d)(1) states that in relevant part, that “[d]eterminations by a state commission of... the just and reasonable rate for network elements for purposes of [section 251(c)(3)]...shall be based on the cost...of providing the...network element (*emphasis added*).

<sup>6</sup> Section 271(c)(2)(B)(ii) requires that the Commission determine whether an applicant is providing “[n]ondiscriminatory access to network elements in accordance with the requirements of ...” the pricing standard enunciated in section 252(d)(1).

<sup>7</sup> Despite references in the decision to the Commission’s long-standing practice of benchmarking and statements regarding rationale provided in prior orders to support the Commission’s statutory interpretation - this is the second (continued....)

Moreover, it is the Commission's failure to respond *to* specific allegations and facts regarding an individual element that fails to meet the statute's requirements. I appreciate that the Commission may be able to base an initial conclusion on the apparent compliance with its rules at a general level. When specific allegations *to* the contrary are presented, however, I believe the Commission has an obligation to do more than merely rely on those generalized findings. Rather it must respond to the specific facts raised.

I do not believe the Commission can meet its statutory duty—to make an affirmative finding that the rates are in compliance with Section 252—by merely relying again on generalized findings in the face of specific allegations to the contrary.

In circumstances where a party challenges the pricing of an individual element within an aggregated rate benchmark containing several elements, I do not believe that it would be overly burdensome for the Commission to review the compliance of those elements on an individual basis.

In my view, Section 252(d)(1) sets forth the pricing standard used for determining compliance in Section 271 applications. That standard explicitly requires that we examine UNE rates by each individual "network element." I believe we should not ignore such an explicit Congressional mandate.

The complete-as-filed requirement provides that "when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight." Here, we waive the complete-as-filed requirement twice and rely on data filed by the applicant well after the comment date.

We first waive the complete-as-filed requirement on our motion in response to comments that contend that Verizon's application was not complete when filed because Verizon had not memorialized its Interconnection Agreements--as required by the Wireline Competition Bureau's *Virginia Arbitration Order*--prior to its filing of its section 271 application.

On August 1, 2002, Verizon filed its 271 application for Virginia. On September 3, 2002, Verizon filed its interconnection agreements with the Bureau. On October 8, 2002, the Bureau approved and deemed effective Verizon's interconnection agreements.

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time that the Commission has addressed whether it has the authority, under 252(d)(1) and 271, to permit rate benchmarking of nonloop prices in the aggregate rather than on an individual element-by-element basis.

<sup>8</sup> *Joinr Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, 16 FCC Rcd 6237, 6247 (2001) *aff'd in part, remanded in part sub nom. Sprint Communications Co. v. FCC*, 274 F.3d 549 (D.C. Cir. 2001).

I support our decision to waive the complete-as-filed requirement and rely on these interconnection agreements filed by the applicant after the comment date because of unique circumstances. In this case, a contributing factor to Verizon's failure to file its interconnection agreement in conjunction with its 271 application was the Commission's own failure to resolve outstanding interconnection arbitration issues on a timely basis.

Under Section 252(b)(4)(C) state commissions must conclude the resolution of any unresolved arbitration issues "not later than 9 months" after a local exchange carrier receives a request for negotiation of interconnection agreement.<sup>9</sup> Under this process, parties are permitted to seek arbitration "during the period from the 135<sup>th</sup> to the 160<sup>th</sup> day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation..."<sup>10</sup> Depending on the timing of the arbitration request, State commissions are essentially required to arbitrate and "conclude the resolution of any unresolved issues" within a 4 to 5 month window." If, however, a state commission fails to carry out its arbitration responsibilities the Commission must "issue an order preempting the State commission's jurisdiction...within 90 days after being notified (or taking notice) of such failure, and shall assume the responsibility of the State commission" and act for the State commission."

On January 19, 2001, the Commission granted the petition to take over the Virginia arbitration and also issued an order delegating to the Wireline Competition Bureau ("Bureau") the authority to serve as the Arbitrator." The Bureau, acting through authority expressly delegated from the Commission, stood in the shoes of the Virginia State Corporation Commission to address separate petitions for arbitration filed by AT&T, Cox, and Worldcom.<sup>14</sup> At this point in the process, State commissions are required to complete the arbitration within 4 to 5 months. It took the Wireline Competition Bureau, however, nearly 18 months to reach a partial decision in response to the parties request for arbitration." Thus it took this agency nearly triple the amount

<sup>9</sup> See 47 U.S.C. 252(b)(4)(C).

<sup>10</sup> See 47 U.S.C. 252(b)(1)

<sup>11</sup> See 47 U.S.C. 252(b)(4)(C).

<sup>12</sup> See 47 U.S.C. 252(e)(5).

<sup>13</sup> *Petition of Worldcom, Inc. for Preemption of Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act and for Arbitration of Interconnection Disputes with Verizon-Virginia, Inc.* CC Docket No. 00-218, Memorandum Opinion and Order, 16 FCC Rcd 6224 (2001); *Arbitration Procedures Order*, 16 FCC Rcd 6233 (2001). At the time of the *Arbitration Procedures Order*, the Commission delegated its authority to the Chief of the Common Carrier Bureau. Since then, the Bureau has been renamed the Wireline Competition Bureau. See *In the Matter of Establishment of the Media Bureau, Wireline Competition Bureau and Consumer and Governmental Affairs Bureau*, Order 17 FCC Rcd 4672 (2002).

<sup>14</sup> *Procedures Established for Arbitration of Interconnection Agreements Between Verizon and AT&T, Cox, and Worldcom*, CC Docket Nos. 00-218, 00-249, 00-251, Public Notice, DA 01-271 (rel. Feb. 1, 2001)

<sup>15</sup> See *In the Matter of Petition of Worldcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes* (continued...)

of time to reach a partial decision, in comparison to the timeframe for completed state arbitration decisions. I am disappointed with the inordinate delay that the Bureau has had in resolving these issues. **As** a result of this delay, consideration of the interconnection agreements in this instance will serve the public interest?

I wish to emphasize again that, absent the kind of extremely unique circumstances at issue here, the Commission should avoid relying on late-filed information. We have continued to take such information into account with greater frequency, and I fear that we may be moving in the wrong direction. In particular, I ~~am~~ concerned that relying on this information may burden commenters — particularly those opposing an application. Commenters need adequate time to evaluate and analyze new information, especially if it affects significant aspects of an application. When we accept late-filed information, we create additional burdens for them.

**As** I have noted previously, we would be better served by emphasizing the importance of having all of an applicant's supporting information in the record when the application is filed rather than granting the waivers that have become more routine. While I acknowledge that any rule will probably necessitate some exceptions, we appear to be failing to make any significant improvements in this area.

For these reasons, I concur in this Order.

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with Verizon Virginia Inc., and for Expedited Arbitration; In the Matter of Petition of Cox Virginia Telcom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon-Virginia, Inc. and for Arbitration; In the Matter of AT&T Communications of Virginia Inc., Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., CC Docket Nos. 00-218, 00-249, 00251, Memorandum Opinion and Order, DA 02-1731 (rel. July 17, 2002). As of this date, the Bureau has only resolved issues that do not relate to the rates that Verizon may charge for the services and network elements that it will provide to the requesting carriers under the interconnection agreements at issue.

<sup>16</sup> Based on special circumstances, today's decision also waives the complete-as-filed requirement to consider rate reductions filed by Verizon on day 63 of our review. The special circumstances at issue arise because commenters only made specific allegations concerning some of the factors and calculations underlying Verizon's rates in reply comments on day 42 of our review. Verizon's submission was thus necessarily filed late. Verizon submitted new switching rates in order to meet a non-loop benchmark analysis to New York rates. Commenters were then given an opportunity — albeit a brief one — to comment on Verizon's limited rate changes, which were consistent with what many of them advocated.